

ATTACHMENT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

Adv. Pro. No. 10-04469 (SMB)

CAROL L. KAMENSTEIN, individually and in her
capacity as joint tenant,

DAVID R. KAMENSTEIN, individually and in his
capacity as joint tenant,

SLOAN G. KAMENSTEIN, and

TRACY D. KAMENSTEIN,

Defendants.

EXPERT REPORT OF
LISA M. COLLURA, CPA, CFE, CFF

**Proof of Transfers
To the Kamenstein Defendants**

June 14, 2019

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I. PROFESSIONAL BACKGROUND

1. I am a Senior Managing Director in the Forensic and Litigation Consulting practice of FTI Consulting, Inc. ("FTI"), with 25 years of experience in accounting, auditing and litigation consulting services. I specialize in providing forensic accounting and financial fraud investigative services in connection with internal investigations on behalf of trustees, boards of directors and audit committees of companies.
2. I have extensive experience in conducting large-scale, fact-finding investigations into fraudulent financial transactions, including tracing significant flows of funds between accounts and entities. During my career at FTI, I have assisted in the investigation of several of the largest fraud cases in the United States.
3. I am a Certified Public Accountant (CPA), a Certified Fraud Examiner (CFE), a member of the American Institute of Certified Public Accountants (AICPA), and am Certified in Financial Forensics (CFF) by the AICPA. My curriculum vitae, attached as **Exhibit 1** to this report, further describes my professional credentials, experience, and qualifications, including my testimony in the last four years.

II. SCOPE OF ASSIGNMENT

4. Bernard L. Madoff Investment Securities LLC ("BLMIS") was an investment firm owned and operated by Bernard L. Madoff ("Madoff"). On December 11, 2008, Madoff was arrested for violating multiple securities laws in connection with running a Ponzi scheme through the investment advisory business of BLMIS (the "IA Business"). On December 15, 2008, Irving H. Picard was appointed as the Trustee for the liquidation of the business of BLMIS, and Baker & Hostetler LLP was retained as his counsel. Shortly thereafter, FTI was retained by Baker & Hostetler LLP, on behalf of the Trustee, to analyze, among other things, the financial affairs of BLMIS and to assist the Trustee with the liquidation of BLMIS. As part of our engagement, FTI was tasked with the exercise of reconstructing the books and records of

BLMIS, including all records of the cash transactions related to the BLMIS IA Business customer accounts as far back as the records allow.

5. This report should be read in conjunction with my Expert Report regarding the Reconciliation of Cash Transactions for All BLMIS Customers and Analysis of IA Business Cash Activity dated January 16, 2019 (the “Collura January 2019 Report”).¹

6. For this report, I was specifically tasked with performing forensic analyses to determine the following:

- Whether the cash deposit and withdrawal transactions reflected on the customer statements for the Kamenstein Defendants² customer accounts at BLMIS that are at issue in this matter (the “Kamenstein Accounts”³) reconciled to available documentation; and
- Whether, based on my review of available bank records, the cash withdrawals (*i.e.*, transfers from BLMIS) reflected on the customer statements for the Kamenstein Accounts during the period between and including December 11, 2006 and December 11, 2008 (the “Two Year Period”) could be traced to bank accounts held by, or for the benefit of, the Kamenstein Defendants.

7. For purposes of this report, I use the term “reconciled” to indicate when I have matched, agreed and/or determined consistency between cash deposits and withdrawals reflected on BLMIS customer statements to information or data per another source (*e.g.*, amounts on BLMIS bank records, correspondence between the customer and BLMIS regarding incoming deposits and/or requests for withdrawals, or documents produced to the Trustee by

¹ My findings and conclusions rendered in the Collura January 2019 Report, along with the accompanying Exhibits to that report are all incorporated by reference herein. All capitalized terms that are defined in the Collura January 2019 Report shall have the same meaning in this report.

² The defendants in this matter are Carol L. Kamenstein, David R. Kamenstein, Sloan G. Kamenstein, and Tracy D. Kamenstein (collectively, the “Kamenstein Defendants”).

³ The Kamenstein Defendants maintained the following BLMIS customer accounts: 1) 1CM596 under the name “TRACY D KAMENSTEIN;” 2) 1CM597 under the name “SLOAN G KAMENSTEIN;” 3) 1CM913 under the name “DAVID R KAMENSTEIN;” and 4) 1CM914 under the name “CAROL KAMENSTEIN” (collectively, the “Kamenstein Accounts”). BLMIS customer account 1CM247 under the name “DAVID R KAMENSTEIN & CAROL KAMENSTEIN J/T WROS” is also at issue in this matter, but has been excluded from this report as there were no cash withdrawals from this account within the Two Year Period as defined below.

the Kamenstein Defendants). For purposes of this report, I use the term “traced” to indicate when I have followed the flow of funds from one bank account (*e.g.*, BLMIS’s bank account) to another bank account (*e.g.*, the Kamenstein Defendants’ bank account).

8. This report has been prepared in connection with the above-captioned litigation and is to be used only for the specific purposes of this lawsuit. It is not to be used for any other purpose without the express written consent of FTI. If called upon to testify in this matter, I intend to provide testimony regarding my analyses and conclusions consistent with this report.

9. FTI is being compensated at a rate of \$670 per hour for my professional time incurred in performing the work necessary to prepare this report. FTI’s fees are not contingent on the conclusions reached in this report or the outcome of the above-captioned litigation.

III. METHODOLOGY

10. To determine whether the cash transactions reflected on the customer statements for the Kamenstein Accounts reconciled to available documentation, I used the results of the forensic analysis of the available BLMIS bank records as described in the Collura January 2019 Report. In addition, I reviewed and analyzed other documents and records maintained at BLMIS, including documents contained in BLMIS customer files, as well as documents produced to the Trustee by the Kamenstein Defendants. Based on my review and analysis of these materials, I identified the cash transactions related to the Kamenstein Accounts that reconciled to these documents.

11. Next, to determine whether the cash withdrawals reflected on the customer statements for the Kamenstein Accounts during the Two Year Period could be traced to bank accounts held by, or for the benefit of, the Kamenstein Defendants, I again used the available information from BLMIS bank records. I also reviewed records produced to the Trustee by a third-party financial institution, Wells Fargo Bank, related to bank accounts held by the Kamenstein Defendants. In addition, I reviewed correspondence produced to the Trustee by the Kamenstein Defendants regarding the cash withdrawals from the Kamenstein Accounts. Using these available records, I identified the recipients of the transfers from BLMIS.

12. The documents and data that I considered in connection with this report are listed in **Exhibit 2**. I reserve the right to supplement my report based on any additional documents or information received.

IV. SUMMARY OF FINDINGS

13. Based on the forensic analyses performed, as described above and throughout this report, as well as my skills, knowledge, experience, education and training that I applied to the documents and information available to me as of the date of this report, my findings are summarized as follows:

- For my reconciliation analysis, I analyzed the cash transactions in the Kamenstein Accounts from September 1999 to December 2008. During this time period, the customer statements for the Kamenstein Accounts reflected 206 cash deposit and withdrawal transactions. I reconciled 100% of the 206 cash transactions reflected on the customer statements for the Kamenstein Accounts to available BLMIS bank records, documentation contained in BLMIS customer files, and/or documents produced to the Trustee by the Kamenstein Defendants. In addition, based on my review of documents contained in the customer files maintained at BLMIS for the Kamenstein Accounts, I have not found any instance of the Kamenstein Defendants communicating to BLMIS any disagreement with respect to the accuracy of any cash transaction reflected on the customer statements for the Kamenstein Accounts.
- For my tracing analysis, I analyzed the cash withdrawals from the Kamenstein Accounts during the Two Year Period, totaling \$2,987,100. Based on available bank records from BLMIS, bank records produced to the Trustee by Wells Fargo Bank, and correspondence produced to the Trustee by the Kamenstein Defendants related to the cash withdrawals from the Kamenstein Accounts, I conclude that \$2,876,300 of the total amount of cash withdrawals reflected on the customer statements for the Kamenstein Accounts during the Two Year Period went to a bank account held by defendants

Carol L. Kamenstein and David R. Kamenstein and \$30,000 went to a bank account held by defendant Sloan G. Kamenstein.

V. RECONCILIATION OF CASH TRANSACTIONS FOR THE KAMENSTEIN ACCOUNTS

A. OVERVIEW

14. The chronological listings of all cash and principal transactions for every BLMIS customer account compiled by FTI, as described in the Principal Balance Calculation Report, included the cash transactions for the Kamenstein Accounts. From September 1999 to December 2008, the customer statements for the Kamenstein Accounts reflected 206 cash transactions, which consisted of 19 cash deposits into the Kamenstein Accounts totaling \$3,268,272 and 187 cash withdrawals from the Kamenstein Accounts totaling \$12,429,233. I was tasked with reconciling these 206 cash transactions to available BLMIS bank records, documentation contained in BLMIS customer files, and/or documents produced to the Trustee by the Kamenstein Defendants. *See Exhibit 3* for a list of these cash deposit and withdrawal transactions; *see also Exhibit 6* – “Reconciliation and Tracing Results – Kamenstein Accounts.”

B. BLMIS BANK ACCOUNTS

15. All 206 cash transactions reflected on the customer statements for the Kamenstein Accounts occurred in the ten-year period for which there were available bank records for the three BLMIS bank accounts described in the Collura January 2019 Report. I reconciled all 206 cash transactions reflected on the customer statements for the Kamenstein Accounts during the period December 1998 to December 2008 to available BLMIS bank records, including monthly bank statements, copies of deposited checks and deposit slips, and copies of cancelled checks. The 206 cash transactions were reconciled to the BLMIS bank accounts as follows:

- 703 Account – 21 transactions (14 deposits via wire transfer, five deposits via check, and two withdrawals via wire transfer)
- 509 Account – 185 transactions (withdrawals via check)

C. BLMIS CUSTOMER FILES

16. In addition to reconciling the cash deposit and withdrawal transactions for the Kamenstein Accounts to the available BLMIS bank records as described above, I also reviewed customer files from BLMIS's records to identify correspondence related to the cash transactions reflected on the customer statements for the Kamenstein Accounts.

17. Customer files related to customer accounts were maintained in BLMIS's records and were generally organized by BLMIS account number. These customer files contained documents including, but not limited to, correspondence between the customer and BLMIS employees regarding incoming deposits and/or requests for withdrawals, customer contact information, BLMIS customer agreements, as well as trust and other agreements.

18. As part of my analysis, I identified the customer files for the Kamenstein Accounts within BLMIS's records. I reviewed the documents contained in these customer files to identify correspondence that related to the cash transactions reflected on the customer statements for the Kamenstein Accounts.⁴ I identified letters and/or other correspondence in these customer files that support 189 of the 206 cash transactions in the Kamenstein Accounts.⁵ One of these letters, which is a request for cash withdrawals from the Kamenstein Accounts, is attached as **Exhibit 4** and is described further below:

- In a letter dated December 1, 2008, defendant David R. Kamenstein states, "Please take the following amounts from our accounts and Federal Express them all to us. . . .

David Kamenstein	Acct # 1-CM913-3	\$31,300
Carol Kamenstein	Acct # 1-CM914-3	\$31,300
Tracy Kamenstein	Acct # 1-CM596-3-0	\$22,200
Sloan Kamenstein	Acct # 1-CM597-3-0	\$13,300"

⁴ I also reviewed the customer file for BLMIS customer account 1CM247 under the name "DAVID R KAMENSTEIN & CAROL KAMENSTEIN J/T WROS." As noted above, this account has been excluded from my report as it did not contain any cash withdrawal transactions during the Two Year Period.

⁵ The remaining 17 transactions for which I was unable to identify supporting documentation in the BLMIS customer files were all cash deposit transactions. I identified a document to support each of the cash withdrawal transactions reflected on the customer statements for the Kamenstein Accounts. *See Exhibit 3.*

19. Furthermore, based on my review of the documents contained in the customer files for the Kamenstein Accounts, I have not found any instance of the Kamenstein Defendants communicating to BLMIS any disagreement with respect to the accuracy of any cash transaction reflected on the customer statements for the Kamenstein Accounts.

D. DOCUMENTS PRODUCED TO THE TRUSTEE BY THE KAMENSTEIN DEFENDANTS

20. As of the date of this report, the Kamenstein Defendants have produced to the Trustee documents consisting of, among other things, correspondence relating to the cash transactions in the Kamenstein Accounts. I reconciled 175 of the 206 cash transactions reflected on the customer statements for the Kamenstein Accounts to these documents produced to the Trustee in this matter.

E. RESULTS OF RECONCILIATION

21. In total, based on my analyses described above, I reconciled 100% of the 206 cash transactions reflected on the customer statements for the Kamenstein Accounts to available BLMIS bank records, documentation contained in BLMIS customer files, and/or documents produced to the Trustee by the Kamenstein Defendants. **Exhibit 3**, which lists each of the 206 cash transactions for the Kamenstein Accounts, contains three columns that indicate the results of my reconciliation to each of these sources of information.

22. In addition, as noted above, I have not found any instance of the Kamenstein Defendants communicating to BLMIS any disagreement with respect to the accuracy of any cash transaction reflected on the customer statements for the Kamenstein Accounts.

VI. TRACING CASH WITHDRAWALS FROM THE KAMENSTEIN ACCOUNTS

A. OVERVIEW

23. The available BLMIS bank records, as described in the Collura January 2019 Report, were also used to determine whether I could trace the funds that left BLMIS's bank accounts to

accounts held by, or for the benefit of, the Kamenstein Defendants. To determine this, I performed a "Receiving Bank" analysis, which traces transfers from BLMIS's bank accounts to bank accounts that received funds from BLMIS.

24. During the Two Year Period, the customer statements for the Kamenstein Accounts reflected 84 cash withdrawal transactions totaling \$2,987,100. These cash withdrawal transactions were in the form of checks written from the 509 Account.

25. Tracing withdrawals via check requires a legible copy of a cancelled check. The necessary information to trace the amount to a receiving bank account, including endorser, banking institution and bank account number, is typically included on the back of a cancelled check. Oftentimes, however, not all of this information was available on the copy of the cancelled check written from the 509 Account and/or the available information was often illegible. In any event, when possible, I identified and captured all available and legible information from the cancelled checks written from the 509 Account related to withdrawals from the Kamenstein Accounts.

26. In addition, I reviewed records produced to the Trustee by Wells Fargo Bank related to bank accounts held by the Kamenstein Defendants. I also reviewed correspondence produced to the Trustee by the Kamenstein Defendants related to cash withdrawals from the Kamenstein Accounts.

B. RESULTS OF TRACING

27. The back of the cancelled checks from BLMIS bank records related to the cash withdrawals from the Kamenstein Accounts during the Two Year Period identify Wachovia NA (which later became Wells Fargo Bank) as the receiving bank and were stamped "FOR DEPOSIT ONLY," but did not include an account number or account holder of the bank account in receipt of funds from BLMIS. However, correspondence produced to the Trustee by the Kamenstein Defendants included instructions from defendant David R. Kamenstein to the Kamenstein Defendants' bookkeeper regarding the checks received from BLMIS. I reviewed

this correspondence, along with bank records produced to the Trustee by Wells Fargo Bank, to identify the bank account(s) that received the funds from BLMIS.

28. **Exhibit 6** identifies the instructions from the available correspondence from David R. Kamenstein, as described above, for each of the cash withdrawals from the Kamenstein Accounts during the Two Year period. Correspondence with instructions was available for all but four of the cash withdrawals from the Kamenstein Accounts during the Two Year Period.⁶ As shown on **Exhibit 6**, the correspondence related to the remaining cash withdrawals from the Kamenstein Accounts during the Two Year Period instruct that all or a portion of the cash withdrawals be put into "the CKDK CAP account." Based on documents included in BLMIS customer files, the "CKDK CAP account" is account #xxxxxx5822 at First Union Bank (which merged with Wachovia in 2001) held by defendants David and Carol Kamenstein.⁷ Further, correspondence produced by the Kamenstein Defendants related to the four cash withdrawals from the Kamenstein Accounts dated 12/6/2006 (just prior to the Two Year Period) also instructs to "[p]ut all in the CKDK CAP account," and the cancelled checks from BLMIS records related to these cash withdrawals are endorsed "FOR DEPOSIT ONLY" to account #xxxxxx5822.⁸ I have therefore concluded that when the instructions are to put funds from BLMIS into the CKDK CAP account, the BLMIS funds were deposited into an account held by defendants Carol L. Kamenstein and David R. Kamenstein with account number #xxxxxx5822.⁹

29. **Exhibit 6** also shows that the correspondence related to the four cash withdrawals from the Kamenstein Accounts dated 6/3/2008 includes instructions to deposit \$15,000 to defendant Sloan G. Kamenstein's checking account, and the rest of the funds from BLMIS should be deposited into the CKDK CAP account.¹⁰ I have confirmed that a deposit of \$15,000 was made into account #xxxxxxxxx8305 held by defendant Sloan G. Kamenstein on 6/4/2008

⁶ Instructions for the four cash withdrawals from the Kamenstein Accounts dated 7/2/2008, totaling \$80,800, were not available in the documents produced to the Trustee by the Kamenstein Defendants.

⁷ See AMF00250579 – 80.

⁸ See 10-04469_Kamenstein_0000205 – 06; MADWAA00206530 – 33; MADWAA00206536 – 39.

⁹ As of the date of this report, bank records related to the CKDK CAP account (#xxxxxx5822) were not available for my review.

¹⁰ See 10-04469_Kamenstein_0000141 – 42.

based on the bank records produced to the Trustee by Wells Fargo Bank.¹¹ Similarly, the correspondence related to the four cash withdrawals from the Kamenstein Accounts dated 9/5/2008 include instructions to deposit \$15,000 to defendant Sloan G. Kamenstein's checking account, and the rest of the funds from BLMIS should be deposited into the CKDK CAP account.¹² I have confirmed that a deposit of \$15,000 was made into account #xxxxxxxxx8305 held by defendant Sloan G. Kamenstein on 9/8/2008 based on the bank records produced to the Trustee by Wells Fargo Bank.¹³

30. **Exhibit 5** summarizes the cash withdrawals from the Kamenstein Accounts during the Two Year Period by BLMIS customer account, as well as the results of my analysis described above. Based on available bank records from BLMIS, bank records produced to the Trustee by Wells Fargo Bank, and correspondence related to the cash withdrawals from the Kamenstein Accounts produced to the Trustee by the Kamenstein Defendants, I conclude that \$2,876,300 of the total amount of cash withdrawals reflected on the customer statements for the Kamenstein Accounts during the Two Year Period went to a bank account held by defendants Carol L. Kamenstein and David R. Kamenstein and \$30,000 went to a bank account held by defendant Sloan G. Kamenstein.¹⁴

¹¹ See 10-04469_WFB_0001289. The holder of this account is shown as "SLOAN KAMENSTEIN DAVID, CAROL AND TRACY KAMENSTEIN."

¹² See 10-04469_Kamenstein_0000158 – 59.

¹³ See 10-04469_WFB_0001299. The holder of this account is shown as "SLOAN KAMENSTEIN DAVID, CAROL AND TRACY KAMENSTEIN."

¹⁴ The remaining \$80,800 relates to four cash withdrawals from the Kamenstein Accounts dated 7/2/2008 for which correspondence was not available in the documents produced to the Trustee by the Kamenstein Defendants. The cancelled checks from BLMIS bank records related to these four cash withdrawals were stamped "FOR DEPOSIT ONLY," and no account number or account holder was identified.

VII. SIGNATURE AND RIGHT TO MODIFY

31. This report and the exhibits contained herein present my findings and the bases thereof. To the extent that any additional information is produced by any party, I reserve the right to incorporate such additional information into my report or to modify my report as necessary.

By:



Lisa M. Collura, CPA, CFE, CFF
June 14, 2019

VIII. LIST OF EXHIBITS

Exhibit 1: Curriculum Vitae

Exhibit 2: Documents Considered

Exhibit 3: List of All Cash Transactions in the Kamenstein Accounts

Exhibit 4: Letter from BLMIS Customer Files for the Kamenstein Accounts

Exhibit 5: Results of Receiving Bank Analysis – Kamenstein Accounts (*During the Two Year Period*)

Exhibit 6: Reconciliation and Tracing Results – Kamenstein Accounts